

(4) The certificate of competency program;

(5) The subcontracting assistance program;

(6) The 8(a) program, under which agencies contract with the SBA for goods or services to be furnished under a subcontract by a small disadvantaged business concern;

(7) The use of women-owned small business concerns;

(8) The use of a price evaluation adjustment for small disadvantaged business concerns, and the use of a price evaluation preference for HUBZone small business concerns;

(9) The Small Disadvantaged Business Participation Program;

(10) The Very Small Business Pilot Program;

(11) The use of veteran-owned small business concerns; and

(12) Sole source awards to HUBZone small business and service-disabled veteran-owned small business concerns.

(b) This part, except for subpart 19.6, applies only in the United States or its outlying areas. Subpart 19.6 applies worldwide.

[48 FR 42240, Sept. 19, 1983, as amended at 59 FR 64785, Dec. 15, 1994; 59 FR 67036, Dec. 28, 1994; 63 FR 35721, June 30, 1998; 63 FR 36122, July 1, 1998; 63 FR 70268, Dec. 18, 1998; 64 FR 10536, Mar. 4, 1999; 65 FR 60544, Oct. 11, 2000; 68 FR 28081, May 22, 2003; 69 FR 25276, May 5, 2004]

#### 19.001 Definitions.

As used in this part—

*Concern* means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States or its outlying areas and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. “Concern” includes but is not limited to an individual, partnership, corporation, joint venture, association, or co-operative. For the purpose of making affiliation findings (see 19.101), include any business entity, whether organized for profit or not, and any foreign business entity, *i.e.*, any entity located outside the United States and its outlying areas.

*Fair market price* means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost (see 19.202-6).

*Industry* means all concerns primarily engaged in similar lines of activity, as listed and described in the North American Industry Classification system (NAICS) manual (available via the Internet at <http://www.census.gov/epcd/www/naics.html>).

*Nonmanufacturer rule* means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own produce or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.406).

*Small business concern* means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121 (see 19.102). Such a concern is *not dominant in its field of operation* when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

*Very small business concern* means a small business concern—

(1) Whose headquarters is located within the geographic area served by a designated SBA district; and

(2) Which, together with its affiliates, has no more than 15 employees and has

average annual receipts that do not exceed \$1 million.

[51 FR 2650, Jan. 17, 1986, as amended at 52 FR 38189, Oct. 14, 1987; 54 FR 25062, June 12, 1989; 55 FR 3881, Feb. 5, 1990; 57 FR 60580, Dec. 21, 1992; 60 FR 48260, Sept. 18, 1995; 61 FR 67410, Dec. 20, 1996; 62 FR 236, Jan. 2, 1997; 62 FR 44820, 44822, Aug. 22, 1997; 63 FR 36122, July 1, 1998; 63 FR 70268, Dec. 18, 1998; 63 FR 71723, Dec. 29, 1998; 64 FR 10536, Mar. 4, 1999; 64 FR 36223, July 2, 1999; 65 FR 46056, July 26, 2000; 65 FR 60544, Oct. 11, 2000; 66 FR 2129, Jan. 10, 2001; 68 FR 28081, May 22, 2003]

### Subpart 19.1—Size Standards

#### 19.101 Explanation of terms.

As used in this subpart—

*Affiliates.* Business concerns are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control both. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships; *provided*, that restraints imposed by a franchise agreement are not considered in determining whether the franchisor controls or has the power to control the franchisee, if the franchisee has the right to profit from its effort, commensurate with ownership, and bears the risk of loss or failure. Any business entity may be found to be an affiliate, whether or not it is organized for profit or located in the United States or its outlying areas.

(1) *Nature of control.* Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

(2) *Meaning of party or parties.* The term *party* or *parties* includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(3) *Control through stock ownership.* (i) A party is considered to control or have the power to control a concern, if the party controls or has the power to control 50 percent or more of the concern's voting stock.

(ii) A party is considered to control or have the power to control a concern, even though the party owns, controls, or has the power to control less than 50 percent of the concern's voting stock, if the block of stock the party owns, controls, or has the power to control is large, as compared with any other outstanding block of stock. If two or more parties each owns, controls, or has the power to control, less than 50 percent of the voting stock of a concern, and such minority block is equal or substantially equal in size, and large as compared with any other block outstanding, there is a presumption that each such party controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(iii) If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

(4) *Stock options and convertible debentures.* Stock options and convertible debentures exercisable at the time or within a relatively short time after a size determination and agreements to merge in the future, are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised.

(5) *Voting trusts.* If the purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose